

The High Court Of Madhya Pradesh: Jabalpur

(DIVISION BENCH)

Criminal Appeal No. 933/2014

(Order on I.A. No. 6367/2017)

Mahesh Pahade

..... APPELLANT

Versus

State of Madhya Pradesh

..... RESPONDENT

CORAM:

Hon'ble Mr. Justice Hemant Gupta, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Appearance:

Mr. Vishal Daniel, Advocate for the Appellant.

Mrs. Namrata Agrawal, Government Advocate for the respondent-State.

Mr. N.P. Dubey, Advocate for the Complainant/Prosecutrix.

Whether Approved for Reporting: Yes

Law Laid Down:

- ✓ Though it is the responsibility of the State to bring the accused to law but in such process the actual sufferer of crime cannot be permitted to stay outside the law and to watch the proceedings from hindsight. It will be travesty of justice if the victims of such heinous crime are denied right to address their grievances before the courts of law. - ***Relied upon*** - Declaration of "Basic Principles of Justice of Victim for Crime and Abuse of Power" adopted in 96th plenary meeting of the General Assembly on 29th November 1985.
- ✓ Once right of appeal has been given to a victim, it shall include all ancillary rights which are attached with the right to appeal. Such right to appeal will include right to seek cancellation of bail if the victim is aggrieved against such an order, as it is her rights and honour, which is in issue apart from the crime against humanity protected by the State.

Judgments Relied upon:

1. (2018) 3 SCC 187 (*Lachhman Dass vs. Resham Chand Kaler and Another*);
2. (2016) 6 SCC 699 (*Amanullah and Another vs. State of Bihar and others*);
3. (2009) 6 SCC 767 (*National Human Rights Commission vs. State of Gujarat and others*);
4. (2006) 3 SCC 374 (*Zahira Habibullah Sheikh and another vs. State of Gujarat and others*);
5. (2001) 6 SCC 338 (*Puran etc. vs. Rambilas and another etc.*);
6. (2000) 2 SCC 391 (*R. Rathinam vs. State by DSP*);
7. (1980) 3 SCC 141 (*P.S.R. Sadhanantham vs. Arunachalam and another*);
8. (1979) 4 SCC 719 (*Rattan Singh vs. State of Punjab*);

Significant Paragraph Nos. : 11 to 24

Heard/Reserved on: 11.07.2018

ORDER

(Passed on this 18th day of July, 2018)

Per : Hemant Gupta, Chief Justice:

I.A. No.6367/2017:

The application (I.A. No.6367/2017) is for cancellation of bail granted to the appellant on 09.12.2016 under Section 389 of the Code of Criminal Procedure, 1973 (for short "the Code") on behalf of the prosecutrix.

2. The present appeal arises out of a judgment passed by the learned Sessions Judge, Mandla on 10.02.2014 convicting the appellant for an offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 (for short "the IPC") and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentencing him to suffer imprisonment for life for an offence

under Section 376(2)(n) of the IPC and fine of Rs.20,000/-; in default of payment of fine, to further undergo rigorous imprisonment for two years.

3. The allegation against the appellant is that he exploited the prosecutrix of 14½ years of age from October, 2010 to 10th February, 2013. The appellant is related to the prosecutrix being his uncle. The accused was a visitor to the father of the prosecutrix at their house and used fiduciary relationship to sexually exploit her. The learned Trial Court convicted the appellant for the offences charged and sentenced the appellant in the manner indicated hereinabove.

4. While considering the third application for suspension of sentence, this Court passed an order on 09.12.2016 admitting the appellant to bail. The appellant had relied upon additional document obtained under the Right to Information Act, 2005 that the date of birth as mentioned in Ex.P-10 as 24.10.1998 does not belong to the prosecutrix and in fact, belongs to another person Dharamraj. In reply on behalf of the respondent, the stand of the appellant was denied, but, the Court found that certificate issued by the Authorities makes the document of age submitted by the prosecution as doubtful. It was observed that the prosecutrix being less than 18 years of age may not be correct if the benefit of three years on either side is considered. Thus the age arrived at by the learned trial Court on the basis of an ossification test conducted on 01.03.2013 in which she was found to be 13½ to 14½ years of age may not be justified.

5. In an application for cancellation of bail, it is pointed out that the registration number has been wrongly mentioned in the certificate (Ex.P-10). The correct Serial No. is 1757 and actually she was born in village Ikalbihari

and contents of Ex.P-10 are correct. It is pointed out that the certificate cannot be said to be a forged document only on the basis of wrong registration number. It is also pointed out that even if the benefit of three years of age is given to the prosecutrix, still she does not attain the age of 18 years as the maximum age would be 17½ years. Thus, it is pointed out that the appellant has been granted bail on the basis of additional document, which could not have been taken into consideration at the stage of consideration of the application for suspension of sentence and that too without giving any opportunity to the victim to controvert the allegation, which was pertaining to the age of the prosecutrix.

6. Learned counsel for the appellant vehemently resisted the application for cancellation of bail and argued that such application is not maintainable, as in terms of Section 389 of the Code, it is only the Public Prosecutor who can file an application for cancellation of bail. Even if a victim has been given right to file an appeal against an order of acquittal in terms of proviso to Section 372 of the Code, she does not become entitled to seek cancellation of bail. Learned counsel for the appellant relies upon a judgment of the Supreme Court reported as **(2015) 15 SCC 613 (Satya Pal Singh vs. State of Madhya Pradesh and others)** wherein it has been held that right to prefer an appeal to the High Court in terms of proviso to Section 372 of the Code can be exercised only after obtaining leave of Court as required under Sub-section (3) of Section 378 of the Code. It is, therefore, contended that the rights of the prosecutrix are not larger than that of a Public Prosecutor. The Public Prosecutor alone has been conferred right to seek cancellation of bail, therefore, the application for cancellation of bail at the instance of prosecutrix is not maintainable.

7. Learned counsel for the appellant also refers to a judgment of the Supreme Court reported as **(2016) 10 SCC 378 (Dhariwal Industries Limited vs. Kishore Wadhvani and others)** to argue that the prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The role of the informant or the private party is limited during the prosecution of a case in a Court of Session. The counsel engaged by such person is required to act under the directions of the Public Prosecutor.

8. Learned counsel for the appellant also relies upon an order passed by the Supreme Court in **Special Leave to Appeal (Criminal) No.2240/2018 (The High Court of Judicature of Hyderabad for the State of Telangana and the State of Andhra Pradesh vs. Mahabunisa Begum & others)** on 14.05.2018, wherein, an order of High Court for the State of Telangana and Andhra Pradesh rendered in Criminal Petition No.7108/2017 (Smt. Mahabunnisa Begum vs. State of Telangana and 2 others) was set aside in the light of the decisions reported as (1999) 7 SCC 467 (Shiv Kumar vs. Hukam Chand & Anr.) and Dhariwal Industries Ltd. (supra). It may be stated that before the High Court in Criminal Petition No.7108/2017 (supra), the complainant sought permission to prosecute a criminal case registered on her complaint through a private Advocate. The petition was allowed and the complainant/victim was permitted to engage a private advocate and conduct prosecution by further examination of any witness in addition to the public prosecutor.

9. We may state that at this stage, only locus of filing of an application for cancellation of bail itself is being examined in the present order. We have not heard the learned counsel for the parties on the merits of the application for cancellation of bail.

10. On the other hand, learned counsel for the prosecutrix invited our attention to the decisions of the Supreme Court reported as **(1979) 4 SCC 719 (Rattan Singh vs. State of Punjab)**; a Constitutional Bench decision reported as **(1980) 3 SCC 141 (P.S.R. Sadhanantham vs. Arunachalam and another)**; and **(2000) 2 SCC 391 (R. Rathinam vs. State by DSP)**. Learned counsel has placed a heavy reliance upon a decision reported as **(2001) 6 SCC 338 (Puran etc. vs. Rambilas and another etc.)** and a recent decision of the Supreme Court reported as **(2016) 6 SCC 699 (Amanullah and Another vs. State of Bihar and others)**. Learned counsel also relies upon the Declaration of "Basic Principles of Justice of Victim for Crime and Abuse of Power" adopted in 96th plenary meeting of the General Assembly on 29th November 1985. The declaration laid down the following for access to justice and fair treatment to the victims:-

“4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

12. The judgment referred to by the learned counsel for the appellant deals with the right of a victim to assist the public prosecutor during trial or the procedure to avail the right of appeal under Section 372 of the Code but present is a situation where the prosecutrix is not seeking her right to engage an Advocate for prosecution of the accused or for filing an appeal. The accused stand convicted and is in appeal. The grievance of the prosecutrix is that the appellant has sought suspension of sentence on the facts, which were not on record and also by misrepresenting the factual situation. However, as mentioned above, we are not examining the merits of the prayer for cancellation of bail but only for the purposes of *locus standi*, this fact is mentioned.

13. In **Rattan Singh (supra)**, the Supreme Court held that it is a weakness of our jurisprudence that the victims of the crime and the distress of the

dependents of the prisoner do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law and this is a deficiency in the system which must be rectified by the legislature. The relevant extract of the decision is reproduced as under:-

"6. The victimisation of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the Welfare State will bestow better thought and action to traffic justice in the light of the observations we have made....."

14. **Arunachalam's case (supra)** was a petition decided by the Constitution Bench as the petitioner was convicted in an appeal by the Supreme Court at the instance of the victim. The Court has delineated the jurisdiction of the Supreme Court while entertaining a petition under Article 136 of the Constitution of India. The relevant extract of the said judgment, reads as under:-

"25. In India also, the criminal law envisages the State as the prosecutor. Under the Code of Criminal Procedure, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1898 (Section 417) the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the Code of Criminal Procedure 1973 (Section 376), the right of appeal vested in the State has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the pre-requisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a

superior court. The Law Commission of India gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. It observed:

"Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person."

However, when the Criminal Procedure Code, 1973 was enacted the statute, as we have seen, confined the right to appeal, in the case of private parties to a complainant. This is, as it were, a material indication of the policy of the law.

26.We think that the Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petition for special leave for reasons which do not bear on the public interest but are prompted by private influence want of bona fide and other extraneous considerations....."

15. In **R. Rathinam's** case (**supra**) the accused were granted bail pending trial. Some Advocates filed a petition for cancellation of bail granted to the accused. The said petition was not entertained by the Bench. It was held by the High Court that the correctness of an order passed by the learned Single Bench

cannot be doubted before the Division Bench. The remedy is under Article 136 of the Constitution of India. But, it was held that in terms of Sub-section (2) of Section 439 of the Code, the bail can be cancelled. The Court held as under:-

“8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law.”

16. The Supreme Court in **Puran**'s case (*supra*) upheld the *locus standi* of father of the deceased in dowry death case to move the High Court to seek cancellation of bail granted by the Additional Sessions Judge as he was not a stranger to the case. The relevant extracts from the decision in **Puran**'s case (*supra*) are reproduced as under:-

“10. Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relied upon the authority in the case of *Dolat Ram & Ors. State of Haryana, (1995) 1 SCC 349*. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the

due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)* reported in (1978) 1 SCC 118. In that case the Court observed as under (SCC p. 124, para 16):-

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439(2) to commit the accused to custody. When however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.

14. Mr. Lalit next submitted that a third party cannot move a Petition for cancellation of the bail. He submitted that in this case the Prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of the bail. He relied upon the case of *Simranjit Singh Mann vs. Union of India*, (1992) 4 SCC 653 and *Janata Dal vs. H.S. Chowdhary*, (1991) 3 SCC 356. Both these cases dealt with Petitions

under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This Court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. It was held that the Petitioner, who was a total stranger, had no 'locus standi' to challenge the conviction and the sentence awarded to the convicts in a Petition under Article 32. The principle laid down in these cases has no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of *R. Rathinam vs. State by DSP, District Crime Branch, Madurai District, Madurai and anr (2000) 2 SCC 391*, needs to be seen. In this case Bail had been granted to certain persons. A group of practising advocates presented petitions before Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the advocates was not maintainable. This Court held that the frame of sub-section (2) of Section 439 indicates that it is a power conferred on the Courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court. It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High Court to remind it of the need to exercise its power suo motu. It was held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. It was held that if the High Court considered that there was no need to cancel the bail then it could dismiss the Petition. It was held that it was always open to the High Court to cancel the bail if it felt that there were sufficient reasons for doing so.

16. We see no substance in this submission. In the hierarchy of Courts, the High Court is the Superior Court. A restrictive interpretation which would have effect of nullifying Section 439(2) cannot be given. When Section

439(2) grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of Orders passed by the Court of Sessions. Of course cancellation of bail has to be on principles set out hereinabove and only in appropriate cases.

17. Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified. [Re. Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 and Krishnan and Another v. Krishnaveni and Another, (1997) 4 SCC 241]”.

[emphasis supplied]

17. The matter came up for consideration before the Supreme Court in the case of **Zahira Habibullah Sheikh and another vs. State of Gujarat and others**, reported as **(2006) 3 SCC 374**, wherein the Court held as under:-

“35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the

community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.”

18. In the case of **National Human Rights Commission vs. State of Gujarat and others** reported as **(2009) 6 SCC 767**, the Supreme Court held as under:-

“19. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in resolution 40/34 of 29th November, 1985. According to the first paragraph of this declaration, victims of crime are described as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws proscribing criminal abuse of power. It is they who need protection.

20. This is essentially to obliterate the apprehension that the public prosecutor is not fair in court or is not conducting the prosecution in the proper manner. The State of Gujarat shall appoint public prosecutors in each of the cases in consultation with the SIT which opinion shall be final and binding on the State Government.

21. It needs to be emphasized that the rights of the accused have to be protected. At the same time the rights of the victims have to be protected and the rights of the victims cannot be marginalized. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the victims' perception the perpetrator of a crime should be punished. They stand poised equally in the scales of justice.

31. As noted above, the role of victim in a criminal trial can never be lost sight of. He or she is an inseparable stakeholder in the adjudicating process. United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, was adopted by the General Assembly through a resolution 40/34 of 29th November 1985. Articles 4 and 5 of the above mentioned United Nations Declaration categorically states:

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

19. In **Amanullah's** case (**supra**), the Court examined the *locus standi* in a criminal case and held that though it is the duty of the State to get the culprit booked for the offence committed by him but if the State fails in this regard and party having *bona fide* connection with the cause of action cannot be left at the mercy of the State without any option to approach the appellate court for seeking justice. The Court held that the appeal is maintainable preferred by a witness. The Court held as under:-

“19. The term ‘locus standi’ is a Latin term, the general meaning of which is "place of standing". *Concise Oxford English Dictionary*, 10th Edn., at page 834, defines the term "locus standi" as the right or capacity to bring an action or to appear in a court. The traditional view of "locus standi" has been that the person who is aggrieved or affected has the standing before the court that is to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to "locus standi", allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the criminal trial, which is conducted, largely, by following the procedure laid down in CrPC. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bona fide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice.

24. After considering the case law relied upon by the learned counsel for the appellants as well as the respondents, in the light of the material placed

on record, we are of the view that the appellants have locus standi to maintain this appeal. From the material placed on record, it is clear that the appellants have precise connection with the matter at hand and thus, have locus to maintain this appeal. The learned counsel for the appellants has rightly placed reliance upon the Constitution Bench judgment of this Court, namely, *P.S.R Sadhanantham v. Arunachalam*, (1980) 3 SCC 141 and other decisions of this Court in *Ramakant Rai v. Madan Rai*, (2003) 12 SCC 395, *Esher Singh v. State of A.P.*, (2004) 11 SCC 585, *Rama Kant Verma v. State of U.P.*, (2008) 17 SCC 257. Further, it is pertinent here to observe that it may not be possible to strictly enumerate as to who all will have locus to maintain an appeal before this Court invoking Article 136 of the Constitution of India, it depends upon the factual matrix of each case, as each case has its unique set of facts. It is clear from the aforementioned case law that the Court should be liberal in allowing any third party, having bona fide connection with the matter, to maintain the appeal with a view to advance substantial justice. However, this power of allowing a third party to maintain an appeal should be exercised with due care and caution. Persons, unconnected with the matter under consideration or having personal grievance against the accused should be checked. A strict vigilance is required to be maintained in this regard.”

20. In **Lachhman Dass vs. Resham Chand Kaler and Another (2018) 3 SCC 187**, an order of granting bail was set aside by the Supreme Court, observing thus:-

“11. Apart from the above, it is also important to note the legal principles governing this case. We make it clear that this case is not an appeal seeking cancellation of bail in any sense rather, this case calls for the legal sustainability of the impugned order granting bail to the accused-respondent herein. The difference between the cancellation of the bail and a legal challenge to an order granting bail for non-consideration of material available on record is a settled proposition. To clarify, there is no ground pleaded herein that a supervening event breaching bail conditions is raised. [refer to *State through C.B.I. vs. Amarmani Tripathi*, (2005) 8 SCC 21; *Prakash Kadam v. Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189].

12. Having cleared this confusion, we may clarify, though seriously urged by the counsel appearing on behalf of the respondent no.1, that there is no warrant for cancellation of bail as there has been no breach of bail condition, yet such submission is not countenanced under the law.”

21. The declaration of basic principles of justice for victims of crime issued by General Assembly of United Nations provides for victim to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Such declaration contemplates that responsiveness of judicial and administrative processes to the needs of victims should be facilitated by informing the victims of their role and the scope, timing and progress of the proceedings including allowing the views and concerns of the victims to be presented and considered at the appropriate stages of the proceedings where their personal interests are involved. Therefore, though it is the responsibility of the State to bring the accused to law but in such process the actual sufferer of crime cannot be permitted to stay outside the law and to watch the proceedings from hindsight. It will be travesty of justice if the victims of such heinous crime are denied right to address their grievances before the courts of law.

22. The judgment in **Puran's** case (*supra*) arises out of an order passed by the High Court cancelling bail granted by Additional Sessions Judge. The Court has drawn distinction when conditions of bail are being infringed such as interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner or when the cancellation of bail is sought when bail is granted by ignoring material evidence on record or a perverse order granting bail is passed in a heinous crime. Such an order was said to be against the principles of law. That was a case of an offence under Section 498 and 304-B of IPC. The Court noticed that such offences are on the rise and have a very serious impact on the Society. The Court held that concept of setting aside unjustified, illegal or perverse order is totally different from the concept of

cancelling the bail on the ground that accused has misconducted himself or because of some new facts require such cancellation. The Court considered an argument that a third party cannot move a petition for cancellation of bail as the prosecution has not moved for cancellation. The Court held that an application for cancellation of bail is not by a total stranger but by the father of the deceased. Therefore, it was held that powers so vested in the High Court can be invoked either by the State or by an aggrieved party. The said power could also be exercised *suo motu* by the High Court. In view of the aforesaid judgment, which pertains to era prior to amendment in Section 372 of the Code giving right to a victim to file an appeal against the order of conviction, clearly gives right to the prosecutrix, a victim of heinous crime on her person to approach this Court for cancellation of bail.

23. Once right of appeal has been given to a victim, it shall include all ancillary rights which are attached with the right to appeal. Such right to appeal will include right to seek cancellation of bail if the victim is aggrieved against such an order.

24. In view of the above, we find that the victim has a right to seek cancellation of an order of suspension of sentence, as it is her rights and honour, which is in issue apart from the crime against humanity protected by the State.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

S/

The High Court Of Madhya Pradesh: Jabalpur

Criminal Appeal No. 933/2014

(Order on I.A. No.6367/2017)

Jabalpur, Dated: 18.07.2018

Order in respect of maintainability of I.A.No.6367/2017 (application for cancellation of bail) by victim passed, signed and dated.

At the request of learned counsel for the appellant, list on **13.08.2018** for hearing on the application for cancellation of bail.

(Hemant Gupta)
Chief Justice

(Vijay Kumar Shukla)
Judge

S/